

Tax INFORM

A Fox Mandal & Associates publication - for private circulation only.

Issue LXIII | April 2026

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Notifications/Circulars:

- CBDT notifies the India–Brazil DTAA amending Protocol, introducing LOB, FTS article, and revised withholding tax framework effective FY 2026–27.

DIRECT TAX



A. Recent Case Laws

[Aspinwall and Co. Ltd. v. Inspecting Assistant Commissioner \[Civil Appeal No. 7796 of 2012\]](#)

SC holds that accumulated losses of an amalgamating company cannot be set off against the income of the amalgamated company under the Kerala Agricultural Income Tax Act.

The Supreme Court held that the Kerala Agricultural Income Tax Act, 1991 does not permit an amalgamated company to set off losses incurred by the amalgamating company without an express statutory provision. The benefit of carry forward and set-off of losses is confined to the assessee who actually incurred such losses and cannot extend through an amalgamation scheme unless specifically authorised by statute. The Court distinguished Section 72A of the Income-tax Act, 1961, noting that no analogous provision exists under the Kerala legislation.

The appellant company amalgamated with Pullangode Rubber & Produce Co. Ltd. pursuant to a scheme sanctioned in November 2006, effective from January 1, 2006. The appellant sought to set off accumulated losses of the amalgamating company against its own agricultural income, relying on the amalgamation scheme and the principle in *Dalmia Power Ltd.* The Revenue contended that such set-off was impermissible, as losses could be carried forward only by the same assessee within the statutory period of eight years. The Revenue further argued that the State of Kerala received no notice during amalgamation proceedings and that the amalgamating company had ceased to exist.

Outcome: By judgment dated April 13, 2026, the Supreme Court dismissed the appeals and upheld the High Court's view. The Court held that no provision under the Kerala Agricultural Income Tax Act permits transfer of losses upon amalgamation, and reliance on the amalgamation scheme could not override statutory limitations. The losses in question pertained to a period beyond the permissible eight-year carry forward limit. The Court distinguished *Dalmia Power Ltd.* on facts, observing that no notice was issued to the State, and therefore no presumption of acceptance could arise.

[Commissioner of Income Tax \(International Taxation\)-1, New Delhi v. Coursera Inc. \[SLP \(C\) Diary No. 10085 of 2026\]](#)

SC dismisses Revenue's SLP, affirming that Coursera's receipts from online course access are not taxable as fees for included services under the India–USA DTAA.

The Supreme Court declined to interfere with the Delhi High Court's ruling, which upheld the Income Tax Appellate Tribunal's finding that Coursera Inc.'s receipts from Indian users for

accessing online educational content do not qualify as fees for technical services under the Income-tax Act, 1961 or as fees for included services under Article 12(4) of the India–USA DTAA. The Tribunal held that Coursera merely provided access to courses created by third-party institutions, did not render any technical or consultancy services, and did not “make available” any technical knowledge, skill, or process to users.

Coursera Inc., a United States tax resident, operates an online learning platform and earned approximately ₹75.66 crore from Indian customers for Assessment Year 2020–21. The Assessing Officer characterised such receipts as fees for technical services under Section 9(1)(vii) and as fees for included services under Article 12, relying on features such as customised content interfaces, analytics, enterprise services and user engagement tools. The Dispute Resolution Panel directed reconsideration of the contractual framework; however, the Tribunal, by order dated March 26, 2024, held that the platform functioned as a content aggregator and facilitator, and that no technical knowledge was made available to users. The Delhi High Court, by judgment dated May 19, 2025, affirmed the Tribunal’s findings, holding that the conclusion was based on factual appreciation and did not give rise to any substantial question of law.

Outcome: By order dated April 1, 2026, the Supreme Court dismissed the Revenue’s Special Leave Petition and declined to interfere with the High Court’s judgment, holding that no grounds under Article 136 of the Constitution warranted interference. The High Court’s ruling attained finality, and Coursera Inc.’s receipts from Indian users were held to be non-taxable in India on the facts of the case.

[Commissioner of Income Tax v. Super Spinning Mills Ltd. \[Tax Case \(Appeal\) Nos. 459 & 460 of 2009\]](#)

Madras HC holds that replacement of machinery resulting in enduring benefit constitutes capital expenditure and cannot be treated as ‘current repairs’.

The Madras High Court held that expenditure on replacement of machinery is capital in nature where it creates an independent asset or provides an enduring benefit, and cannot be classified as revenue expenditure under “current repairs.” The Court reiterated the Supreme Court’s position that each machine in a textile mill constitutes a separate and independent asset. The test for “current repairs” is confined to expenditure incurred to preserve or maintain an existing asset without enhancing its capacity, efficiency, or lifespan beyond the original state.

The assessee, engaged in manufacture of yarn, claimed substantial expenditure toward replacement of machinery for Assessment Years 1996–97 and 1997–98 as revenue expenditure. The Assessing Officer disallowed the claim and treated the expenditure as capital in nature, allowing only depreciation. The Commissioner of Income Tax (Appeals) largely upheld this view. However, the Income Tax Appellate Tribunal allowed the assessee’s claim by relying solely on Janakiraman Mills Ltd., treating such replacement as “current repairs.” The Revenue challenged this before the High Court, contending that the Tribunal relied on a precedent subsequently reversed by the Supreme Court in Saravana Spinning Mills and Ramaraju Surgical Cotton Mills.

Outcome: By judgment dated April 9, 2026, the Madras High Court allowed the Revenue's appeals and set aside the Tribunal's order. The Court held that the Tribunal failed to apply the correct legal test and erroneously relied on an overruled precedent without independent analysis. Replacement of machinery cannot constitute "current repairs" unless it merely addresses wear and tear without creating a new asset or enduring advantage. The matter was remanded for fresh adjudication in light of the Supreme Court's rulings.

[GM Modular Private Limited v. Principal Commissioner of Income Tax – 1 & Ors. \[Writ Petition No. 378 of 2026\]](#)

Bombay HC holds that an assessee has an absolute right to seek revision under Section 264 and that penalty cannot be imposed on debatable issues.

The Bombay High Court held that Section 264 of the Income-tax Act, 1961 confers wide revisional powers on the Commissioner, enabling revision of "any order" passed by a subordinate authority, subject only to limited statutory exceptions. An assessee has discretion to choose between appellate and revisional remedies, with no statutory compulsion to pursue an appeal. The Court further held that penalty under Section 270A is discretionary and cannot be imposed where the issue is debatable, the claim is bona fide, and the assessee has disclosed all material facts.

The assessee filed its return for Assessment Year 2019–20, wherein a disallowance under Section 36(1)(va) relating to delayed deposit of employees' contribution to Provident Fund and Employee State Insurance was initially made during processing under Section 143(1). The same disallowance was reiterated in assessment proceedings and later upheld by the Income Tax Appellate Tribunal following the Supreme Court's decision in Checkmate Services Pvt. Ltd. The Revenue then levied penalty under Section 270A for alleged under-reporting of income. The assessee filed a revision application under Section 264, which the Principal Commissioner summarily rejected without examining merits, leading to this writ petition.

Outcome: By judgment dated March 30, 2026, the Bombay High Court allowed the writ petition and quashed both the revisional order and the penalty order. The Commissioner failed to exercise jurisdiction under Section 264 and was duty-bound to examine the merits. On penalty, the Court held that there was no "under-reported income" since the addition had already been made at the processing stage, and the issue was debatable at the time of filing, being supported by binding jurisdictional precedent later reversed. The case fell within the exception under Section 270A(6), as the assessee made a bona fide claim with full disclosure.

[Principal Commissioner of Income Tax, Central-II, New Delhi v. Globe Capital Market Ltd. \[ITA 364/2024\]](#)

Delhi HC holds that buy-back of shares is a capital reduction and not an acquisition of property, and therefore cannot be taxed under Section 56(2)(x).

The Delhi High Court held that buy-back of shares by a company constitutes reduction of share capital under Section 68 of the Companies Act, 2013 and cannot be equated with acquisition

of a capital asset or property. Once shares are bought back, they stand extinguished and cease to exist—no question arises of the company deriving any benefit from acquiring property at less than fair market value. Consequently, Section 56(2)(x) of the Income-tax Act, 1961 cannot apply to such transactions.

In this case, the assessee company undertook buy-back of its own shares during Assessment Year 2018–19 at a price lower than the fair market value determined under Rule 11UA of the Income-tax Rules, 1962. The Assessing Officer treated the difference between the buy-back price and fair market value as income under Section 56(2)(x), contending that the company had acquired property at less than its fair market value. The Commissioner of Income Tax (Appeals) deleted the addition, holding that buy-back is not a purchase of property but a capital restructuring exercise. The Income Tax Appellate Tribunal upheld this view, leading to the Revenue's appeal before the High Court.

Outcome: By judgment dated April 7, 2026, the Delhi High Court dismissed the Revenue's appeal and upheld the orders of the appellate authorities. The Revenue's interpretation of Section 56(2)(x) was untenable, as buy-back is fundamentally different from acquisition of an asset and results in extinguishment of shares. A company cannot be taxed on notional gains arising from destruction of its own shares. The statutory framework under the Companies Act reinforces the character of buy-back as capital reduction.

[Make My Trip \(India\) Private Limited v. Assistant Commissioner of Income Tax, Circle-75\(1\), Delhi & Anr. \[W.P.\(C\) 11956/2025\]](#)

Delhi HC quashes rejection of lower TDS certificate under Section 197 as arbitrary and mandates adherence to Rule 28AA parameters.

The Delhi High Court held that an order under Section 197 of the Income-tax Act, 1961 must be reasoned and strictly comply with the parameters prescribed under Rule 28AA of the Income-tax Rules, 1962. The authority must evaluate estimated income, past assessments, existing tax liability, and overall financial position. Mere existence of outstanding demand cannot justify rejection without examining its nature, enforceability, and surrounding facts.

In this case, the assessee, engaged in online travel services, applied for a nil or lower withholding tax certificate for Financial Year 2025–26 on the basis of brought-forward losses and nil taxable income. The application was rejected by the Assessing Officer solely on the ground of outstanding tax demand aggregating to approximately ₹23.80 crore, without examining the assessee's submissions regarding pending rectifications, appeals, and substantial refunds due. The assessee contended that similar certificates had been consistently granted in earlier years at lower rates and that the rejection was a non-speaking order passed without application of mind to Rule 28AA criteria.

Outcome: By judgment dated March 16, 2026, the Delhi High Court set aside the impugned order and remanded the matter for fresh consideration. The rejection suffered from non-application of mind, as the authority failed to consider relevant factors, including reduction of demand through rectification, pending refunds, and past practice of granting lower

certificates. The order violated principles of natural justice and statutory requirements. The Court directed the Assessing Officer to pass a reasoned order within two weeks.

Commissioner of Income Tax–LTU v. ACC Limited [Income Tax Appeal No. 1 of 2020]

Bombay HC holds that Assessing Officer cannot go behind the profit and loss account while computing book profits under Section 115JB.

The Bombay High Court held that adjustments to book profits under Section 115JB of the Income-tax Act, 1961 are strictly confined to items expressly provided in Explanation 1. The Assessing Officer has no jurisdiction to revisit or recompute net profit shown in the profit and loss account beyond such specified adjustments. The Court reaffirmed the principle in Apollo Tyres Ltd. that the Assessing Officer cannot “go behind” the profit and loss account except to the limited extent permitted by statute.

In this case, the assessee had earned income mim a contract in Saudi Arabia and offered the net income after reducing corporate tax paid in Saudi Arabia. The Assessing Officer sought to recompute book profits under Section 115JB by adding back such foreign tax, contending that the gross income ought to have been considered. The Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal deleted the adjustment, holding that the foreign tax had not been debited to the profit and loss account and therefore did not fall within the scope of any clause under Explanation 1. The Revenue challenged this before the High Court along with multiple other issues relating to computation of book profits and tax treatment of subsidies and provisions.

Outcome: By judgment dated March 16, 2026, the Bombay High Court dismissed the Revenue’s appeal on this issue and upheld the Tribunal’s findings. Since the corporate tax paid in Saudi Arabia had not been debited to the profit and loss account, it never entered the computation of net profit and therefore could not be added back under clause (b) of Explanation 1. The Assessing Officer’s powers under Section 115JB are limited and cannot extend to recomputing profits outside the statutory framework. No substantial question of law arose on this issue.

Notifications/Circulars

CBDT Notification No. 39/2026, dated March 30, 2026

CBDT notifies the India–Brazil DTAA amending Protocol, introducing LOB, FTS article, and revised withholding tax framework effective FY 2026–27.

The Central Board of Direct Taxes (CBDT) has notified the Protocol amending the Double Taxation Avoidance Agreement between India and Brazil, originally signed in 1988 and amended in 2013. The Protocol, signed on August 24, 2022, entered into force on October 18,

2025, and has now been given effect under Section 90 of the Income-tax Act, 1961. The provisions apply in India for income arising in previous years beginning on or after April 1, 2026.

Key Changes:

- Revised Preamble incorporating anti-abuse intent and expressly targeting treaty shopping arrangements
- Limitation of Benefits (LOB) Article restricting treaty access to “qualified persons”, with additional tests such as active business test and principal purpose test
- Insertion of Article on Fees for Technical Services (FTS) providing for source taxation at a capped rate of 10%, along with a defined scope covering managerial, technical and consultancy services
- Revised withholding tax rates:
 - Dividends: 10% (for qualifying shareholding of $\geq 20\%$) and 15% in other cases
 - Interest: 10% for specified long-term financing by banks, 15% otherwise
 - Royalties: 10% or 15% depending on nature of rights
- Expanded Permanent Establishment (PE) provisions, including:
 - Service PE threshold of 183 days
 - Anti-fragmentation rule
 - Broader dependent agent PE concept aligned with BEPS standards

Practical Impact: The Protocol materially tightens treaty eligibility and expands India’s source taxation rights. Taxpayers should reassess existing structures involving Brazil, particularly for royalty, FTS, and financing arrangements, and evaluate LOB compliance. The introduction of a specific FTS article is especially significant given its absence in the earlier treaty framework.

[Click Here](#) to Read the Circular.

INDIRECT TAX



Goods & Services Tax

Recent Case Laws:

[Harish Wadhvani v. Directorate General of GST Intelligence \(DGGI\), Raipur & Anr. \[SLP \(Cri.\) No. 5747 of 2026\]](#) read with [Harish Wadhvani v. DGGI, Raipur & Anr. \[MCRCA No. 265 of 2026\]](#)

SC upholds denial of anticipatory bail and affirms that GST offences involving amounts below ₹5 crore are non-cognizable and bailable.

The Supreme Court affirmed the statutory position under Section 132 of the Central Goods and Services Tax Act, 2017 (CGST Act) that offences involving amounts below ₹5 crore are non-cognizable and bailable. The Court declined to interfere with the High Court's refusal to grant anticipatory bail, reiterating that interference under Article 136 is unwarranted absent any legal infirmity in the impugned order.

In this case, the applicant was investigated by the Directorate General of GST Intelligence (DGGI) for alleged fraudulent availment of Input Tax Credit (ITC). The applicant contended that no incriminating material was found during search and that coercive measures, including repeated summons and forced deposit of approximately ₹88.78 lakh, were undertaken despite absence of adjudication. The Revenue submitted that the total GST liability involved was ₹1.16 crore, with ₹74.89 lakh recoverable, and therefore the offence fell below the ₹5 crore threshold, making it non-cognizable and bailable. It was further argued that no arrest proceedings had been initiated under Section 69 of the CGST Act.

Outcome: By order dated April 7, 2026, the Supreme Court dismissed the Special Leave Petition and upheld the Chhattisgarh High Court's order dated March 25, 2026. The High Court held that since the alleged liability was below ₹5 crore, the offence was non-cognizable and bailable, making anticipatory bail based on apprehension of arrest not maintainable. The denial of anticipatory bail was sustained.

[Vijay Steel Industries v. Union Territory of Jammu & Kashmir through State Tax Officer \[WP\(C\) No. 956/2023\]](#)

J&K HC holds that M.S. Scrap generated during manufacture qualifies as "specified goods" and is eligible for reimbursement under the Budgetary Support Scheme.

The Jammu & Kashmir and Ladakh High Court held that goods emerging as a necessary by-product of manufacturing, which retain the essential character of the principal manufactured goods, cannot be excluded from “specified goods” under the Budgetary Support Scheme. The exclusion list under the relevant notification is exhaustive and operates only to exclude goods expressly enumerated therein, not incidental outputs arising from the same manufacturing process.

In this case, the petitioner, engaged in manufacture of TMT/CTD bars, had been availing excise duty exemptions prior to the introduction of Goods and Services Tax. Post-GST, it sought reimbursement under the Budgetary Support Scheme in respect of tax paid on M.S. Scrap generated during the manufacturing process. The Revenue rejected the claim on the ground that the petitioner was registered only for manufacture of TMT/CTD bars and that scrap did not constitute “specified goods” under Notification SRO 519. The petitioner contended that such scrap was not waste but a commercially marketable output arising from the same manufacturing process and had historically been treated as manufactured goods.

Outcome: By judgment dated April 8, 2026, the High Court allowed the writ petition and quashed the rejection order. M.S. Scrap was an inevitable residue of manufacturing, had undergone the same process as finished goods, and retained their essential character. Since scrap was not part of the exclusion list under the notification, denial of reimbursement was unjustified. The matter was remanded for reconsideration and grant of reimbursement within a stipulated time frame.



[Nivara Infradevelopers LLP v. Union of India & Ors. \[Writ Petition \(L\) No. 7888 of 2026\]](#)

Bombay HC quashes bank account attachment for non-compliance with statutory safeguards and holds such coercive action violative of Article 300A.

The Bombay High Court held that provisional attachment under Section 83 of the CGST Act is a draconian power requiring strict compliance with statutory preconditions, including prior formation of opinion based on tangible material and adherence to the doctrine of proportionality. Such power cannot be exercised mechanically or as a pre-emptive measure. Any deviation from prescribed safeguards renders the action invalid.

The petitioner's bank accounts were provisionally attached on January 23, 2026, during pendency of proceedings under Section 67(2). Both the pre-attachment intimation (Form GST DRC-23) and attachment orders (Form GST DRC-22) were issued on the same date. The petitioner contended that no opinion was formed, no material was disclosed, and no opportunity was provided, despite submission of objections and offer of alternate security. The Revenue could not justify the procedural lapses or demonstrate compliance with Radha Krishan Industries.

Outcome: By judgment dated April 2, 2026, the High Court allowed the writ petition and quashed the attachment orders. The action was arbitrary, high-handed, and in complete breach of statutory safeguards, resulting in serious civil consequences and violation of the petitioner's right to property under Article 300A of the Constitution. The Court imposed personal costs of ₹25,000 on the concerned officer and permitted the Revenue to initiate fresh proceedings subject to issuance of a proper show cause notice.

[Jagruteshwar Metals Pvt. Ltd. v. Union of India & Ors. \[Writ Petition No. 8367 of 2023\]](#)

Bombay HC quashes composite SCN covering multiple financial years and holds that GST notices must be issued year-wise.

The Bombay High Court held that the CGST Act mandates determination of tax liability on a year-wise basis, with independent limitation periods for each financial year. Issuance of a composite show cause notice (SCN) covering multiple financial years is impermissible, as it conflates distinct tax periods, undermines statutory limitation provisions, and prejudices the assessee's ability to respond effectively.

The petitioner challenged a show cause notice issued under Section 74 of the CGST Act covering July 2017 to March 2024, alleging suppression of taxable value. The petitioner contended that clubbing multiple financial years into a single notice was contrary to the GST scheme, relying on Milroc Good Earth Developers and Rite Water Solutions. The Revenue relied on the Delhi High Court's decision in Mathur Polymers, which permitted consolidated notices in cases involving fraudulent input tax credit across multiple years.

Outcome: By judgment dated March 27, 2026, the Bombay High Court allowed the writ petition and quashed the impugned SCN. The GST regime is structured around distinct tax periods with separate limitation timelines under Sections 73(10) and 74(10). Consolidation of multiple years into a single notice is inconsistent with the statutory scheme. Dismissal of the SLP against Mathur Polymers did not result in merger, making the contrary view therein not binding. The Revenue was granted liberty to issue fresh notices in accordance with law.

Bharat Kumar Agarwal v. Joint Commissioner (AE) [Writ Petition Nos. 9166 and 9354 of 2026]

Telangana HC directs issuance of separate DRC-07 orders and temporary registration to enable Managing Director to avail appellate remedy.

The Telangana High Court held that where tax liability and penalty are imposed through a composite order on both a company and its Managing Director, the statutory right to appeal cannot be defeated by procedural deficiencies. Separate adjudication orders must be issued for each person. Where an individual is unregistered, authorities must facilitate access to appellate remedies by granting a temporary registration or identification number.

In this case, a composite Order-in-Original and corresponding Form GST DRC-07 were issued confirming demand of approximately ₹2.20 crore along with interest and penalties against the company and its Managing Director for alleged fraudulent availment and passing of Input Tax Credit. The Managing Director, not being registered under Goods and Services Tax, was unable to file an appeal against the liability imposed on him. The petitioner contended that absence of a separate order and registration effectively denied him his statutory remedy of appeal. The Revenue acknowledged this difficulty and submitted that separate orders could be issued and that temporary registration could be granted under the applicable rules.

Outcome: By order dated April 8, 2026, the High Court disposed of the writ petitions with directions to issue two separate Form GST DRC-07 orders—one for the company and one for the Managing Director—within two weeks. The Managing Director must be granted a temporary registration or identification number upon application within one week. The limitation period for filing appeal commences from the date of the fresh order, preserving the petitioner's appellate remedy.



Key Contacts



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